

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA

v.

DZHOKHAR TSARNAEV

No. 13-CR-10200-GAO

**ASSENTED-TO MOTION FOR PRESERVATION
OF DOCUMENTS REVIEWED IN CAMERA**

Defendant-Appellant, Dzhokhar Tsarnaev, by and through counsel, and pursuant to the Fifth and Sixth Amendments to the United States Constitution, respectfully moves this Court for an Order directing (1) the government to submit under seal to the Clerk's Office an exact copy of all documents it provided to the Court (including any U.S. Magistrate Judge) for *in camera* review in connection with this case; and (2) the Clerk of Court to preserve all such documents until further order of the Court.

The following grounds are asserted in support of this motion:

1. A complete and accurate record, essential in any appeal, is especially crucial in a capital case as a critical "safeguard against arbitrariness and caprice." *Dobbs v. Zant*, 506 U.S. 357, 358 (1993) (quoting *Gregg v. Georgia*, 428 U.S. 153, 167 (1976)).
2. In the course of the proceedings in this case, the government provided documents to the Court for *in camera* review.
3. In order to enable a comprehensive appellate review of these proceedings, it is essential that any documents that were provided to the Court for *in camera* review be preserved, whether those documents are currently in the possession of the Court or the government. It is the understanding of counsel for Defendant-Appellant that the ordinary

practice in this district is for the Court to return such documents to the government after *in camera* review is completed. Accordingly, counsel for Defendant-Appellant asks that the Court direct the government to file with the Clerk under seal an exact copy of any documents it previously asked the Court to review *in camera*. If the government is aware of any documents that were reviewed *in camera* and have subsequently been lost or destroyed, or if it is unable to locate an exact copy, counsel asks that this Court direct the government to file a letter under seal describing such documents.

4. Counsel for Defendant-Appellant further asks that this Court direct the Clerk of Court to preserve all such documents until further order of the Court.

5. Undersigned counsel have conferred with counsel for the government, who stated that it does not oppose this motion.

Conclusion

Based on the foregoing, counsel for Defendant-Appellant requests that this Court enter an order requiring the government to file under seal with the Clerk of this Court an exact copy of all documents it previously provided to the Court for *in camera* review, and directing the Clerk of Court to preserve all such documents until further order of the Court.

Respectfully submitted,

DZHOKHAR TSARNAEV

by his attorneys

/s/ David Patton

David Patton, Esq. (NY Bar # 3926813)
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007
(212) 417-8700
DAVID_PATTON@FD.ORG

Judy Clarke, Esq. (CA Bar # 76071)
CLARKE & RICE, APC
1010 Second Avenue, Suite 1800
San Diego, CA 92101
(619) 308-8484
JUDYCLARKE@JCSR.LAW.NET

CERTIFICATE OF SERVICE

I certify that the attached Motion for Preservation of Documents Reviewed *In Camera* was filed electronically through the ECF system for the District of Massachusetts, which will send electronic notice to counsel of record for all parties on this the 17th day of January 2017, including the following:

Aloke Chakravarty, Esq.
U.S. Attorney's Office
1 Courthouse Way
Suite 9200
Boston, MA 02210
Aloke.Chakravarty@usdoj.gov

/s/ David Patton.

David Patton, Esq. (NY Bar # 3926813)
Federal Defenders of New York, Inc.
52 Duane Street, 10th Floor
New York, NY 10007
(212) 417-8700
DAVID_PATTON@FD.ORG